

The opinion in support of the decision being entered today was **not** written  
for publication and is **not** binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GARY W. DITROIA

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Appeal No. 2004-2024  
Application No. 10/138,716

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ON BRIEF

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Before ABRAMS, McQUADE, and BAHR, Administrative Patent Judges.  
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-10, 17, 20, 22, 23 and 25. Claims 18 and 19 have been allowed, claims 21 and 24 have been indicated as containing allowable subject matter, and claims 11-16 have been canceled.

We AFFIRM.

### BACKGROUND

The appellant's invention relates to a an electrical connector. An understanding of the invention can be derived from a reading of exemplary claim 1, which has been reproduced below.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Dillon	1,397,040	Nov. 15, 1921
Alvarez	2,580,269	Dec. 25, 1951
O'Loughlin	4,976,627	Dec. 11, 1990

The following rejections stand under 35 U.S.C. § 102(b):

- (1) Claims 1-10 and 22 as being anticipated by Alvarez.
- (2) Claims 17 and 25 as being anticipated by O'Loughlin.

The following rejections stand under 35 U.S.C. § 103(a):

- (3) Claim 20 as being unpatentable over Alvarez in view of Dillon.
- (4) Claim 23 as being unpatentable over O'Loughlin in view of Dillon.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 16) for the examiner's reasoning in support of the rejections, and to the Brief (Paper No. 15) and Reply Brief (Paper No. 17) for the appellant's arguments thereagainst.

### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

As explained on page 2 of the specification, the appellant's invention provides improvements in electrical connectors for connecting together at least two angled conductors, which connectors in the prior art were made by methods such as stamping. The appellant states that this process was costly and the connectors were perceived to be of poor quality. In the appellant's invention the connector is made by the process of extrusion, which the appellant asserts provides advantages such as the dies being inexpensive as compared to prior art forming dies for sheet metal connector designs (specification, page 10).

The invention is manifested in representative claim 1 in the following manner:

An electrical connector for connecting at least two angled conductors together, the electrical connector comprising:

a first section having a first conductor receiving channel with a first channel axis; and

a second section having a second conductor receiving channel with a second channel axis angled relative to the first channel axis,

wherein the first and second sections are comprised of a single extruded metal member which has been formed to angle the first and second channel axes relative to each other.

(1)

Claims 1-10 and 22 stand rejected as being anticipated<sup>1</sup> by Alvarez. The only argument advanced by the appellant with regard to this rejection is that Alvarez fails to disclose or teach that the electrical connector is an “extruded” metal member and therefore the reference is not anticipatory. While we admit that Alvarez does not disclose a specific process for making the disclosed connector, we do not agree with the appellant that this, in and of itself, causes the rejection to be fatally defective. Our reasoning follows.

The preamble of claim 1 does not state that the inventive connector is a “product by process.” However, the body of the claim recites that the connector comprises first and second sections and that these sections, which constitute the entire connector, are “comprised of a single extruded metal member” (emphasis added). The appellant has not pointed out any structural differences between the claimed connector and that

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<sup>1</sup>Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). A reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. In re Graves, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from In re LeGrice, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

disclosed by Alvarez, but is relying upon the process by which the claimed connector is made, that is, that it is extruded, for patentability over Alvarez (Brief, pages 4-7; Reply Brief). This, in our opinion, confirms the examiner's conclusion that the claim sets forth, in fact, a product by process. Such being the case, the present situation falls within the guidance provided by our reviewing court in In re Thorpe,<sup>2</sup> which states that "[i]f the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process."

It is our opinion that the examiner has provided a reasonable rationale tending to show that the claimed product appears to be the same as a product of the prior art except for the process by which it was produced, a position to which the appellant has acceded. The burden thus shifts to the appellant to come forward with evidence establishing that there is an unobvious difference between the claimed product and the prior art product.<sup>3</sup> This the appellant has not done. According to the Brief (page 6) and the reply Brief (pages 1 and 2), an extruded metal member provides a number of advantages that are not present in a non-extruded metal member, such as less internal stress and increased range taking capability, as well as the ability to accommodate more conductors per side and to utilize dies that are less extensive than other types of

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<sup>2</sup>777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

<sup>3</sup>In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983).

forming dies. However, not only has the appellant not explained how these are manifested in structural differences when compared to the Alvarez connector, but argument and conclusionary statements do not constitute evidence,<sup>4</sup> and therefore we find the appellant's assertions not to be sufficient to overcome the examiner's position. The fact is that the appellant has not established that an extruded connector differs structurally from a connector such as that disclosed in Alvarez, even if it were assumed, arguendo, that the Alvarez article is the product of stamping, a process which the appellant has admitted was known in the art at the time of his invention (specification, page 2).

With regard to the appellant's argument that "extruded" as used in the claim is an adjective and not a verb, we point out that the definition of "extruded" is shaped "as by forcing through a die,"<sup>5</sup> which in our opinion establishes that the phrase "extruded metal member" recited in claim 1 means that the metal member is a product of the process of extrusion, in the same manner that a connector that a "stamping of metal" would be a product of the process of stamping.

The rejection of claim 1 as being anticipated by Alvarez is sustained. Since the appellant has chosen to group claims 2-10 with claim 1, from which they depend (Brief, page 7), the like rejection of these claims also is sustained.

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<sup>4</sup>See In re deBlauwe, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984).

<sup>5</sup>See, for example, Webster's New Collegiate Dictionary, 1973, page 408.

Claim 22 also stands rejected as being anticipated by Alvarez. This claim adds to claim 1 the limitation that the first and second channel axes are angled relative to one another in two directions. The appellant argues that this is not the case in Alvarez, but does not explain why (Brief, page 7). It is clear to us from Figure 2 that first section 30 and second section 32 of Alvarez, and thus the channel axes thereof, are angled at 90 degrees to one another, which meets the terms of claim 22, and we will sustain this rejection.

(2)

Claims 17 and 25 have been rejected as being anticipated by O'Loughlin, which discloses a connector having first (42) and second (44) C-shaped sections connected together by a curved third section (32). The O'Loughlin connector is a product of the process of stamping (column 3, line 60). The single argument advanced by the appellant with regard to this rejection is the same as that set forth in opposition to the rejection of claim 1, that is, that the claim requires that the connector be extruded, and therefore is not anticipated by O'Loughlin. Our position with regard to such an argument was set forth above with regard to the rejection of claim 1 as being anticipated by Alvarez. It is equally applicable here. In the absence of the appellant pointing out where claim 17 fails to be readable on the structure of the connector disclosed by O'Loughlin, and in the absence of evidence establishing that a connector made by the process of extrusion differs structurally from one made by stamping, we

are constrained to sustain the rejection of claim 17 and dependent claim 25, which was grouped therewith.

(3)

Claim 20 stands rejected 35 U.S.C. § 103(a) as being obvious<sup>6</sup> in view of the combined teachings of Alvarez and Dillon. Claim 20 depends from claim 1, adding thereto the limitation that at least one of the first or second sections comprise a tapered end. It is for this feature that Dillon was cited.

Notwithstanding the difference between the rejection of claim 1 and that of claim 20, the appellant has chosen to allow claim 20 to stand or fall with claim 1 (Brief, page 7), and has offered no argument regarding the separate patentability of claim 20. This being the case, claim 20 falls with claim 1, and the rejection is sustained.

(4)

Claim 23 adds to claim 17 the requirement that the C shape of the first section comprise a tapered end. The claim stands rejected as being unpatentable over O'Loughlin in view of Dillon. Since the appellant has grouped claim 23 with claim 17, from which it depends, the rejection of claim 23 also is sustained.

CONCLUSION

All four of the rejections are sustained.

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<sup>6</sup>The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981)



The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal  
may be extended under 37 CFR § 1.136(a).

AFFIRMED

NEAL E. ABRAMS  
Administrative Patent Judge

JOHN P. McQUADE  
Administrative Patent Judge

JENNIFER D. BAHR  
Administrative Patent Judge

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